

1  
2 PUBLIC HEARING  
3 -----x  
4 In Re:  
5  
6 THE UNITED STATES OF AMERICA  
7 SMALL BUSINESS ADMINISTRATION  
8  
9 -----x

10  
11 Jacob Javits  
12 Federal Building  
13 26 Federal Plaza  
14 New York, New York  
15  
16 Thursday, June 16, 2005  
17 8:45 a.m.  
18  
19

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2 A P P E A R A N C E S:  
3  
4 SBA MEMBERS:  
5  
6 KAREN JANUS, ESQ., Moderator  
7  
8 WILLIAM MANGER, Administrator, Region 2  
9  
10 DIANE HEAL, Program Analyst  
11  
12 JANET FASANO, Director, Area 1  
13  
14 CELESTE CASTOR, District Counsel  
15  
16  
17 ALSO PRESENT:  
18  
19 ROBERT M. LEVINE, CM  
20 Court Reporter  
21  
22  
23  
24  
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1 Small Business Arbitration - June 16, 2005  
2 MS. JANUS: Good morning. would  
3 everyone please take a seat. As most of  
4 you know, this is a public hearing

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5 conducted by the United States Small  
6 Business Association at its offices  
7 located at 26 Federal Plaza, New York,  
8 New York, pursuant to the notice of  
9 public hearing published in the Federal  
10 Register on May 12, 2005.  
11 The purpose of today's hearing is to  
12 obtain the views of SBA's stakeholders on  
13 how to improve the agency size standards  
14 and on whether businesses that are  
15 majority owned by venture capital  
16 companies should be allowed to  
17 participate in the Small Business  
18 Innovation Research program.  
19 My name is Karen Janus. I am a  
20 senior attorney with SBA's Office of  
21 General Counsel. And I will be  
22 moderating today's hearing. Joining me  
23 on the panel are DIANE HEAL, Janet  
24 Fasano, and Celeste Castor.  
25 DIANE HEAL is a program analyst with

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1 Small Business Arbitration - June 16, 2005  
2 SBA's Office of Size Standards in  
3 Washington, D.C.. In this capacity,  
4 Diane has been involved in all aspects of  
5 SBA's size standards program.  
6 Janet Fasano is the area director for  
7 SBA's government contracting, Area-1

8 office which covers New England, New  
9 York, New Jersey, Puerto Rico, and the  
10 Virgin Islands. In her capacity as area  
11 director she signs all size  
12 determinations for Area-1. And is  
13 involved with the application of size  
14 standards as they apply to all of SBA's  
15 programs.

16 Celeste Castor is the District  
17 Counsel for SBA's New York district  
18 office. She's involved in the legal  
19 aspects of all of the SBA programs  
20 administered by the New York district  
21 office, and frequently is called upon to  
22 get involved in issues of size and the  
23 application of size standards.

24 I wanted to also just note, Diana  
25 Perette in the back. If you are with the

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5

1 Small Business Arbitration - June 16, 2005  
2 press, please make sure you speak to  
3 Diana and register with her.

4 Also, with us this morning is William  
5 Manger, the regional administrator for  
6 SBA's Region 2 which covers New York, New  
7 Jersey, Puerto Rico, and the Virgin  
8 Islands. Bill will be giving the opening  
9 remarks for today's hearing.

10 MR. MANGER: Thank you very much,

NewYork.txt  
11 Karen. And good morning. And everyone,  
12 welcome to 26 Federal Plaza. I am as  
13 Karen just said, I'm Bill Manger. And I  
14 am the regional administrator for the SBA  
15 in this part of the country. Again, New  
16 York State, New Jersey, Puerto Rico, and  
17 the Virgin Islands.

18 I am pleased to host today's hearing  
19 on size standards in New York. And I  
20 oversee all activities in Region 2,  
21 including all of the SBA's lending and  
22 technical assistance programs.

23 The mission of the SBA is to maintain  
24 and strengthen the nation's economy by  
25 aiding, counseling, assisting and

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6

1 Small Business Arbitration - June 16, 2005  
2 protecting the interests of small  
3 businesses. And by helping families and  
4 businesses recover from national  
5 disasters.

6 Size standards is a fundamental issue  
7 within SBA since it determines which  
8 businesses are eligible for SBA  
9 assistance, small business preferences on  
10 federal contracts and small business  
11 assistance for many other federal  
12 programs and regulations.

13 The purpose of today's hearings is to

14 hear from you on the issues pertaining to  
15 size standards. In particular, on ways  
16 SBA may simplify size standards. And  
17 other ideas to make size standards easier  
18 to understand and use by the general  
19 public.

20 As you may know, the SBA has been  
21 conducting these hearings across the  
22 country this month. By the end of June,  
23 eleven public hearings will have been  
24 conducted throughout the country.

25 The testimony presented at today's

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1 Small Business Arbitration - June 16, 2005  
2 size standard, along with other comments  
3 we received to December 2004, advanced  
4 notice of proposed rule making will be  
5 used to help SBA develop new proposals to  
6 further those objectives.

7 We are also taking the opportunity of  
8 these hearings as Karen mentioned to seek  
9 the public's views on  
10 whether businesses majority owned by  
11 venture capital companies should be  
12 allowed to participate in a small  
13 business innovation program.

14 On behalf of myself and Administrator  
15 Hector Baretto, we thank you for taking  
16 time out of your busy schedules to

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17 participate in this vitally important  
18 effort.  
19 We'll now turn the hearing back over  
20 to Karen Janus who will introduce the  
21 panelists. She's actually already done  
22 that. And go over the ground rules how  
23 the hearing is to be conducted.  
24 Thank you very much for being here.  
25 MS. JANUS: Thank you, Bill. Before

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8

1 Small Business Arbitration - June 16, 2005  
2 we begin taking public testimony, I would  
3 like to explain the format for the  
4 hearing and go over the ground rules with  
5 respect to oral testimony.  
6 First of all, as published in the  
7 Federal Register, today's meeting is  
8 scheduled to last until 5:30 p.m..  
9 However, if everyone interested in  
10 testifying has had  
11 the opportunity to do so prior to 5:30,  
12 the hearing will be adjourned earlier.  
13 And in our case, I believe the hearing  
14 will be adjourned much earlier. In fact,  
15 it probably will be adjourned before  
16 lunchtime.  
17 There will be a mid-morning break,  
18 and a lunch break, if necessary. 76  
19 individuals registered to attend today's

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20 hearing. 30 of whom pre-registered to  
21 testify. If there is anyone present in  
22 the hearing room who did not pre-  
23 register to provide testimony but now  
24 wishes to do so, please speak to somebody  
25 at the registration table. Lilly or

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9

1 Small Business Arbitration - June 16, 2005  
2 Anna. And they will add your name to the  
3 list.

4 Size standards. All oral testimony  
5 presented at today's hearing will be  
6 recorded and transcribed by our court  
7 reporter. And I'd like to ask you all  
8 when you do come up and present your  
9 testimony, to make sure that you speak  
10 clearly and distinctly so the court  
11 reporter can record everything that you  
12 say correctly.

13 If you have a written copy of  
14 your testimony or supplemental materials  
15 and haven't already done so, I would  
16 encourage you to place it on the  
17 registration table. If you need your  
18 testimony to speak, then please just  
19 place it on this table right here after  
20 you're finished.

21 All of the testimony from today's  
22 hearing, whether written or oral, as well

23 as any supplemental materials you provide  
24 will become part of the administrative  
25 record that SBA considers when it resumes

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10

1 Small Business Arbitration - June 16, 2005  
2 deliberations on the issues that are the  
3 subject of the hearing.

4 As most of you know, today's hearing  
5 is based on a number of events beginning  
6 with SBA's publication of a proposed rule  
7 to restructure its small business size  
8 standards in March of 2004.

9 The proposed rules proposed a  
10 reduction of the number of size standards  
11 levels from 37 to 10 and the conversion  
12 of receipt-based size standards to  
13 employee-based size standards.

14 After studying the concerns  
15 expressed by members of the public who  
16 responded to SBA's request for comments  
17 on the proposed rule, SBA decided that it  
18 needed to gather additional public input  
19 on a number of issues. Most of which  
20 were raised in the comments. So the  
21 agency withdrew the proposed rule and  
22 decided to pursue two courses of action  
23 to gather more public input.

24 First, on December 3, 2004, SBA  
25 published an advanced notice of proposed

1 Small Business Arbitration - June 16, 2005  
2 rule making, requesting comments on how  
3 to simplify and improve SBA's size  
4 standards in general and on eleven  
5 specific topics. Most of which were  
6 based on the comments to the proposed  
7 rule and related policy issues. The time  
8 for commenting on the issues listed in  
9 the advanced notice of proposed rule  
10 making closed on April 3, 2005.

11 Second, SBA decided to conduct a  
12 series of public hearings throughout the  
13 country to provide interested parties  
14 with an opportunity to meet with SBA  
15 officials and express their views on size  
16 standards in general, as well as on the  
17 eleven topics specified in the advanced  
18 notice of proposed rule making. This is  
19 one of the hearings in that series.

20 which brings us to the rules  
21 governing the hearing. As stated in the  
22 notice of public hearing, if you would  
23 like to testify at today's hearing your  
24 testimony must pertain either to the  
25 general topic of how to make SBA size

1 Small Business Arbitration - June 16, 2005  
2 standards easier to use and understand,  
3 or to one or more of the eleven specific  
4 topics identified in the advanced notice  
5 of proposed rule making.

6 Those include, 1, the approach to  
7 simplify size standards; 2, the  
8 calculation of number of employees  
9 including how SBA defines an employee for  
10 size purposes; 3, the use of receipts-  
11 based size standards; 4, the designation  
12 of size standards for federal  
13 procurements; 5, the establishment of  
14 separate and distinct size standards for  
15 use solely in federal determined  
16 programs; 6, the establishment of tiered  
17 size standards; 7, the simplification of  
18 the affiliation regulations; 8, the  
19 simplification of the small business  
20 joint venture eligibility regulations; 9,  
21 the possible grandfathering of small  
22 business eligibility; 10, the impact of  
23 SBA's size standards on the regulations  
24 of other federal agencies; and 11, the  
25 possible participation of businesses

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1 Small Business Arbitration - June 16, 2005  
2 majority owned by venture capital  
3 companies in the Small Business

4 Innovation Research program and the  
5 effect such participation would have on  
6 the program.

7 You must stay on the topics I just  
8 listed. If you veer off these topics you  
9 will be stopped and asked either to  
10 return to one of the above topics or to  
11 be seated. Individuals will be called to  
12 testify in the order established by the  
13 pre-registration sign-up sheet.

14 When you hear your name, please step  
15 up to the podium and use the microphone  
16 to address the panel. Before you begin  
17 your testimony, please state your name  
18 and title as well as the name of the  
19 organization on whose behalf you are  
20 testifying.

21 Oral testimony will be limited to  
22 five minutes per speaker. Sandy Liu and  
23 Melinda Chen Wu, would you wave, will  
24 serve as our timekeepers. They will  
25 display. We have our cards. They'll

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14

1 Small Business Arbitration - June 16, 2005  
2 display a green card when you have one  
3 minute left. A yellow card when you have  
4 30 seconds left. And a red card when you  
5 are out of time.

6 Oh, I should also mention if everyone  
Page 12

7           could turn off their cell phones, we  
8           appreciate that. Please note that once  
9           you have finished your presentation,  
10          panel members may ask you questions to  
11          ensure that we fully understand your  
12          testimony.

13                 Finally, because the purpose of the  
14          hearing is to gather your opinions and  
15          ideas, members of the panel will not  
16          indicate whether or not they agree or  
17          disagree with your views. And will not  
18          engage in any debate with you.

19                 Now that we've established the ground  
20          rules for the hearing, I would like to  
21          begin accepting public testimony, okay.  
22          I'd like to call the first presenter,  
23          Shan Shammugan. And after Shan will be  
24          Sasha Rash.

25                 MR. SHAMMUGAN: Thank you very much

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15

1           Small Business Arbitration - June 16, 2005  
2           for this opportunity to give testimony.

3                 Let me introduce myself. My name is  
4           Shan Shammugan. I'm the principal of SCA  
5           Engineering. And I want to thank the  
6           SBA. Years ago I was in the program where  
7           I got a start. I was in the program for  
8           nine years. We work for Army Corps.,  
9           Coast Guard, Department of Justice and

10 other agencies and so on.

11 I graduated in 1989. After that it  
12 is very difficult to compete with the big  
13 businesses. There are businesses in our  
14 industry. Example, next block to me is a  
15 business, number 1 in the country. They  
16 are making \$2 billion every year. And  
17 there is no way that we can compete with  
18 those people. Those size standards is  
19 very, very critical. The SBA can choose  
20 to address the small businesses or they  
21 can go with all businesses and completely  
22 do away with the small business. Because  
23 you know I'm an immigrant. I came with  
24 nothing. I went to school. And I'm  
25 working in this industry for the last 34

□

16

1 Small Business Arbitration - June 16, 2005  
2 years. I worked on the World Trade  
3 Center when it was built. And I worked  
4 there in the building. And now it's  
5 gone. When I see the thing I literally  
6 cry. And we are all working hard.

7 I wanted to share something with you,  
8 you know, because you are part and parcel  
9 of the SBA. When I worked with the Small  
10 Business, I know these people, the  
11 business with the working parties. We  
12 are all working, 80 of us, 100 of us, 200

13 of us a week to make this business grow.  
14 And what does small business mean? You  
15 are creating jobs. 90 percent, 80  
16 percent of the jobs are created by small  
17 business. And they bring in innovation.  
18 They fuel the economy. And if we don't  
19 do that the whole thing will be done.  
20 Our country will be down like other Third  
21 world countries. Please consider this.  
22 we are not against big business. We are  
23 not against big business. But without  
24 your support we cannot compete.  
25 And now, going back to this now,

□

17

1 Small Business Arbitration - June 16, 2005  
2 I know I'm on the engineering and the  
3 area agency and so on. We have having a  
4 dollar system now. We can go to the  
5 employee system. There's nothing wrong  
6 with that. But the number of people in  
7 that system cannot be. There are 1,000  
8 or so. It has to be right now.  
9 New York State is saying we must have  
10 35 people to be a small business. And I  
11 can understand. You cannot have five  
12 people. We cannot have 500 people. We  
13 have to strike a balance. If you want to  
14 have 50, that's going to work.  
15 Similarly, we cannot have

16 grandfathered somebody that's already  
17 achieved like the program I was in.  
18 After nine years they say it's out.  
19 That's far enough. You gave me a chance.  
20 We worked on it. We want to move on.  
21 But I can't be there all the time, taking  
22 away opportunities of all other my  
23 brothers and sisters. It's not right.  
24 And without your support, without your  
25 advocacy, the small businesses cannot

□

18

1 Small Business Arbitration - June 16, 2005  
2 survive. We cannot compete with the  
3 government businesses.  
4 So, please, I'm begging you, I'm  
5 begging you because it's a crucial thing.  
6 I see that every day. Every day for me  
7 to work. See, I work with the New York  
8 State DOT. I'm working with the DEC.  
9 I'm working with DASNI. To win the job  
10 is a big battle. All these  
11 qualifications. They always tell you  
12 it's based on qualifications and so on.  
13 Don't believe any of them. It's all  
14 nonsense. Nobody is going to give you a  
15 job unless -- and you cannot compete with  
16 the businesses. And I have a list of  
17 these people here.

18 For example, I'd be happy to answer  
Page 16

19 any of the questions. I don't want to  
20 take too much time. Also, I see here the  
21 companies like Raytheon, Northrup-  
22 Grumman. And also all these people they  
23 don't belong in here. They have all the  
24 resources to get the job. And unless  
25 you're out of business, please consider

□

19

1 Small Business Arbitration - June 16, 2005  
2 this. If there is any question, I mean,  
3 I can go on and so on.  
4 That's the gist of it.

5 Grandfathering is no good. Tier  
6 system we can have for different  
7 industries. We can have different sizes  
8 because it varies widely. What happens  
9 to employment. What happens to  
10 securities? We can do that and so on.

11 Thank you very much for this  
12 opportunity. I am always available, not  
13 only here, elsewhere also to work with  
14 the SBA.

15 One more thing, I worked with Dr.  
16 Ellis, Clay Martin, all these people.  
17 They are good folks. They are always  
18 trying to help. And I'm here to work  
19 with you. Thank you very much.

20 MS. HEAL: Mr. Shammugan, one before  
21 you leave.

22           Could you give your company name and  
23           address and information because our  
24           registration didn't have that on there.  
25           I want to make sure that's there.

□

20

1           Small Business Arbitration - June 16, 2005  
2           MR. SHAMMUGAN: Yes, we can do that.  
3           MS. HEAL: You said you're an  
4           architect and engineering firm?  
5           MR. SHAMMUGAN: I am.  
6           MS. HEAL: You are aware that the  
7           size standard is \$4 million?  
8           MR. SHAMMUGAN: Yes.  
9           MS. HEAL: And that the original  
10          proposed rule was to switch it to 50  
11          employees?  
12          MR. SHAMMUGAN: Right.  
13          MS. HEAL: Do you have any comments  
14          on that?  
15          MR. SHAMMUGAN: No. We used to have  
16          \$2.5 million before. Now we were going  
17          to 4 million, which is okay. And 50 is  
18          something that we can work with. That's  
19          reasonable/fair, and is going to work for  
20          all of us and so on. I agree with that.  
21          MS. HEAL: All right. You had also  
22          mentioned that the large businesses that  
23          you can't compete with, like Raytheon.  
24          Can you explain a little more on

25 that.

21

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2 MR. SHAMMUGAN: Raytheon, for  
3 example. They used to run an engineering  
4 company. And then, unfortunately, a  
5 couple of years ago they sold it to  
6 another company. And Raytheon, as you  
7 know, is a multi-billion dollar defense  
8 company. And if they want to compete  
9 with me, all they have to do is, look, I  
10 got 5,000 people and the contracting  
11 office will be so scared. Is he going to  
12 give it to the company with 5,000 or is  
13 he going to give it to somebody with 550  
14 people. There is no way we can compete.  
15 So unless the SBA stands for us, and do  
16 something, we will lose innovation, we  
17 will lose the job.  
18 See, another thing that I want to  
19 share this also. See, these small  
20 businesses, because we are neighborhood  
21 oriented, community oriented, we are  
22 supporting the minorities and all the  
23 people who need a job. And again, when  
24 you cannot just tell a small businessman  
25 you manage a small business.

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2 He becomes such a useful citizen. He  
3 has no time for anything else. Many  
4 times my wife is complaining, what is it.  
5 You come here from the office. You are  
6 sitting down  
7 doing the work. You don't even talk to  
8 me. This is the reality. You cannot do  
9 that. I can't go to a movie. I can't do  
10 anything else because it's completely for  
11 the last 30 years. It just takes all  
12 day.  
13 MS. HEAL: Are you also aware of the  
14 Brooks bill?  
15 MR. SHAMMUGAN: Brooks bill. I am  
16 familiar. Can you just give me in two  
17 words --  
18 MS. HEAL: The Brooks bill is  
19 qualification based. And it's the way  
20 the federal government does business.  
21 And that there are limits by law on what  
22 we can set aside for small business and  
23 engineering.  
24 MR. SHAMMUGAN: Right. I'm familiar  
25 with the Brooks thing and so on. But

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5 person after that is Rose Ngadi.

6 MS. RASH: Thank you for the  
7 opportunity to speak today. As you  
8 stated, my name is Sasha Rash. I am a  
9 small business owner in New Jersey. I  
10 own a company called La Jolie, which is a  
11 hair salon that employs about 40 people.  
12 I'm also the president of the Salon  
13 Association which is a national  
14 association of salon owners across North  
15 America. We represent 7,000 salon  
16 locations.

17 The size standard issue is something  
18 very close to the heart of the  
19 professional salon industry because we  
20 are so labor-intensive. Dozens of my  
21 colleagues have utilized the SBA to  
22 expand their businesses. And personally  
23 I plan to try and work with the SBA over  
24 the next three years in the strategic  
25 plan to expand my business to multiple

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25

1 Small Business Arbitration - June 16, 2005  
2 locations.

3 while confusing to some, the size  
4 standard of \$6 million is not confusing  
5 to the professional salon industry. It's  
6 very, very clear. And we believe that  
7 it's quite fair and quite simple.

8 Because we're so labor-intensive, even  
9 noted by the Census Bureau to I think the  
10 receipts are about, receipts per employee  
11 are about \$40,000 in the Census Bureau  
12 data. It would be very hard to be  
13 anything but employee, anything but size  
14 standard around revenue or receipts  
15 based. Personally, in my company, our  
16 per employee receipts are about \$50,000.  
17 which means we'd have to have about 120  
18 employees to meet the six million dollar  
19 mark right now. So as you can see, it  
20 would be very, very tough for us to deal  
21 with the standard that was changed based  
22 on employee number.

23 Also, I'm concerned about the full-  
24 time employee calculations. Because we  
25 have such a labor pool that is often

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26

1 Small Business Arbitration - June 16, 2005  
2 part-time. And even less part-time than  
3 what our national standards. Part-time  
4 in my industry is about 23 hours or so.  
5 And it very much fluctuates. It's a very  
6 flexible industry which is very appealing  
7 to women in particular. And to calculate  
8 hours because of the flexibility  
9 involved, because of the lack of or the  
10 less than typical standards in my

11 industry, it would be very excessive and  
12 very arduous for us to calculate full-  
13 time employees and come up with those  
14 rates legitimately and accurately.

15 So we believe, and I believe if the  
16 goal is to simplify the professional  
17 salon industry for our segment, we  
18 believe it is simplified. We believe it  
19 works as it stands. And we'd like to see  
20 it stay.

21 For the reasons mentioned previously,  
22 I believe that a conversion to an  
23 employee-based size standard would, in  
24 fact, make size standards more  
25 complicated for the salon industry.

□

27

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2 Based on the unique characteristics  
3 of the salon industry, including the  
4 relatively low receipts-to-employee ratio  
5 and high proportion of part-time  
6 employees, I believe the current  
7 receipts-based standard, size standard is  
8 the most appropriate approach for the  
9 salon industry.

10 As such, I respectfully recommend  
11 that no changes are made to the size  
12 standards for the professional salon  
13 industry. Thank you.

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14 MS. HEAL: Thank you very much.  
15 I'm sorry. There was a little mix-up in  
16 the registration.  
17 MS. RASH: I gave you a business  
18 card.  
19 MS. HEAL: That's all I need.  
20 MS. RASH: Thank you very much.  
21 MS. JANUS: Excuse me, I actually  
22 misspoke. The next presenter is Namita  
23 Kansal and after Namita is Rose Ngadi.  
24 She stepped out. Okay. So the next  
25 speaker would be Rose Ngadi. She stepped

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28

1 Small Business Arbitration - June 16, 2005  
2 out as well. Okay. How about Burton  
3 Louissaint? No. How about Ron Cohen?  
4 MR. COHEN: Thanks very much for the  
5 opportunity to speak. I'm Ron Cohen. I  
6 am the president, CEO, and founder of  
7 Acorda Therapeutics in New York, a  
8 biotechnology company that focuses on  
9 developing novel therapies for people  
10 with spinal cord injuries, and muscular  
11 sclerosis, and other diseases that affect  
12 the central nervous system.  
13 I will address my comments  
14 specifically to the proposal that or the  
15 rule interpretation regarding the  
16 percentage ownership by individuals

17 versus venture capitalists in small  
18 businesses. This is a critical issue for  
19 the success and furtherance of the  
20 biotech industry.

21 Our industry is one of the most  
22 innovative engines of growth in the  
23 country, in the world today. And is  
24 projected to be one of the top, if not  
25 the top engine of growth and innovation

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29

1 Small Business Arbitration - June 16, 2005  
2 in industry in the next century, in this  
3 coming century.

4 Already the biotech industry has  
5 produced numerous therapies that improve  
6 the quality of life or even cure multiple  
7 diseases; cancers, HIV, cardiovascular  
8 disease, MS, blindness, and the like. As  
9 well as producing major improvements in  
10 agriculture and industrial processes.

11 So it is a vital industry. And the  
12 SBIR program has been a vital support for  
13 this industry from the time of its  
14 inception just 25 years ago. I will  
15 submit that it, better than almost any  
16 other industry, fulfills the true intent  
17 of Congress in establishing the SBIR  
18 program in terms of supporting major  
19 innovations, small business. And overall,

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20 the economy and welfare of the nation.  
21 I will also submit that it provides  
22 possibly the best return on investment  
23 that the SBIR program has produced. I'll  
24 give you an example from my own company.  
25 As I say, we are innovators in therapy

□

30

1 Small Business Arbitration - June 16, 2005  
2 for spinal cord injury and MS.  
3 In the early going of my company we  
4 had some early stage therapies that for  
5 two or three years I could not get funded  
6 by venture capitalists. They were  
7 regarded as too early, too untested, not  
8 proved well enough for the venture  
9 capitalists even to take the risks.  
10 We got some SBIR grants, however  
11 early, may have been based on the merit  
12 of the science. And those grants enabled  
13 us to push the technology forward enough  
14 that we were able to get venture  
15 capitalists finally to come in. And that  
16 was actually three and a half years after  
17 we started the company.  
18 Now, since that time we have  
19 raised \$140 million, most of it in  
20 venture capital money to fund the very  
21 expensive clinical trials and very  
22 science that we have to push forward.

23 But without the initial basis from these  
24 SBIR grants for these projects, we  
25 couldn't have done it.

□

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2 So, on the other hand, had this  
3 interpretation been in effect at the  
4 time, we would not have been able to get  
5 the grants. And we very well might not  
6 exist today.

7 We have a Phase III drug right now in  
8 the last stage of clinical trials that's  
9 shown the ability to improve walking and  
10 strength in people with MS. That was one  
11 of our earlier SBIR grants that helped  
12 get that program off the ground.

13 So I think the key to understanding  
14 this is that in our industry, although we  
15 are small companies, we have 59 people in  
16 my company, the costs to develop a new  
17 drug are so staggering that individuals  
18 cannot possibly do it, unless they are  
19 Bill Gates. And even he has his limits.

20 So you need venture capital  
21 because it costs up to a billion dollars  
22 now, actually an average of a billion  
23 dollars to bring a drug from the  
24 laboratory to the bedside of the patient.

25 Even in the biotech industry, our

1 Small Business Arbitration - June 16, 2005  
2 costs are a little lower than in big  
3 pharma, let's say it's 3 to 500 million,  
4 you just can't get that from individuals.

5 Furthermore, the distinction of  
6 individuals and VCs is an artificial one.  
7 Because, in fact, venture capital groups  
8 represent the pool investment dollars of  
9 many individuals. So as long as they are  
10 employee-based, which is required by the  
11 statute, there shouldn't be this  
12 artificial distinction. We should  
13 recognize that a company of 59 people is,  
14 in fact, a small business. And in  
15 biotech can produce huge benefits based  
16 on early SBIR support.

17 Most biotech companies are fewer than  
18 100 people, let alone 500. The  
19 interpretation of this rule is impeding  
20 the development of the industry. And I  
21 urge you to reconsider that  
22 interpretation which was not defined, as  
23 you know, in the original statute. Thank  
24 you.

25 MS. HEAL: I only have one question.

1 Small Business Arbitration - June 16, 2005  
2 You had mentioned about individuals. You  
3 were aware that there was a change made  
4 last year that a firm can now be owned by  
5 another firm. It's just that the venture  
6 capitalists, when you start looking at  
7 that, there is the affiliation issue.

8 MR. COHEN: I'm not sure I  
9 understand.

10 MS. HEAL: Last, when was it,  
11 December 3, 2004 there was a change in  
12 the SBIR regulations that said that a  
13 another firm can own an SBIR company.

14 MR. COHEN: Can that firm be more  
15 than 51 percent owned by venture capital  
16 groups?

17 MS. HEAL: If the affiliation rules  
18 kick in and if all the affiliated  
19 companies total number of employees is  
20 below 500 employees. And I think that's  
21 where a lot of the concern is, is in the  
22 affiliation.

23 Because a lot of the venture capital  
24 firms are several, usually there's  
25 several venture capital firms that will

□

1 Small Business Arbitration - June 16, 2005  
2 own or buy into one company.

3 MR. COHEN: It's unusual for a  
Page 30

4 venture capital firm to own itself more  
5 than 51 percent. For example, we have 35  
6 different investor capital groups  
7 investing in us. And they owned about 85  
8 percent of company. I'm not sure that  
9 what you're talking about completely  
10 clears up this issue.

11 MS. HEAL: No, it doesn't. But I  
12 just wanted to make sure. Because there  
13 are some people that are coming around  
14 testifying, not aware that there was a  
15 change made as far as a company. It's no  
16 longer an individual has to own it.

17 MR. COHEN: But it does still have to  
18 be more than 51 percent. Right. And  
19 that's the key.

20 MS. HEAL: Right.

21 MR. COHEN: And it really needs to be  
22 changed because it will hurt this  
23 engine of growth in biotech. We already  
24 see in our surveys that the biotech, bio  
25 industry organization has taken over. 60

□

35

1 Small Business Arbitration - June 16, 2005  
2 percent of companies have now said that  
3 they have been denied grants and are no  
4 longer applying for grants because of  
5 this interpretation. And that is already  
6 stopping worthy projects from going

7 forward that the VCs simply will not  
8 fund.

9 By the way, that's another key issue.

10 Even if you have a company that has a  
11 Phase III project, late stage that the  
12 VCs are funding, it doesn't mean if that  
13 company's same scientists come up with  
14 another brilliant idea that the VCs will  
15 permit their money to be used for it.

16 we have a saying right now. we have  
17 a terrific technology right now that  
18 grows nerves back that allows rats to get  
19 up and walk away. The VCs don't want to  
20 allocate funding for it. It's too early.  
21 They want us to get grant support and  
22 prove that it can go to the clinic.

23 Thanks very much.

24 MS. HEAL: Is Sasha Rash back? She  
25 spoke. She spoke.

□

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2 How about Namita Kansal?

3 MS. KANSAL: Good morning. Good  
4 morning, Madam Chairman. Thank you  
5 ladies and gentlemen. Thank you for  
6 giving me the opportunity to present  
7 today.

8 I will be speaking in very general  
9 terms. I have a very small company in

10 New York. We patented and created a very  
11 innovative product. The product is a  
12 performance measurement system. It  
13 measures.

14 Can you hear me now? I'm sorry. I  
15 guess I'm shorter than the previous  
16 gentleman.

17 Our company has created a very  
18 innovative system of measuring  
19 performance. It rates and measures  
20 vendors and contractors and their ongoing  
21 delivery on a daily, weekly, and a  
22 monthly basis.

23 Let's say you have a \$10 million  
24 contract with IBM. How do you know \$10  
25 million, IBM is delivering \$10 million

□

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1 Small Business Arbitration - June 16, 2005  
2 worth in value and not 2 or 3 or 4 unless  
3 you use a system of measuring  
4 performance. That's what we do. Our  
5 customers believe that it helps them save  
6 15 to 20 percent of contractual costs.

7 In terms of what I'm doing here, I  
8 just want to make one or two very key  
9 points. That as we approach the  
10 government to bid for contracts, provide  
11 our services to them in terms of  
12 measuring performance, for the large

13 multimillion dollar contracts as to are  
14 we getting value or not, I notice that we  
15 don't win any contracts. Partly because  
16 we're competing with firms like Accenture  
17 or Verpoint or IBM which have no  
18 incentive letting us through the door.

19 So we are just, there's no way a  
20 small company like ours I realize can win  
21 contracts in the government sector unless  
22 there is some provision that allows  
23 companies like ours which are small to  
24 compete within their own peer group.  
25 whether the size standards are based on

□

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1 Small Business Arbitration - June 16, 2005  
2 employee standards or whether they're  
3 based on revenue, it has to be within  
4 your own peer group. That's the only  
5 group that you can actually compete  
6 against. Otherwise, you're going fishing  
7 with a golf club, really. And that was  
8 really my key point.

9 I could go through a couple of  
10 examples as to what our company has  
11 actually encountered in terms of  
12 government contracts. And mostly we have,  
13 only a company like ours, two choices.  
14 Either get into a transaction with a very  
15 merciless main contractor, which you are

16 at the mercy of the large contractor.  
17 Your technology can get stolen or you  
18 will only get paid once the contract is  
19 won, or not compete at all.

20 And I understand that there's a  
21 minority legal advocacy group that has  
22 proposed a certain tiered approach to  
23 both employee standards and revenue  
24 standards that I thought looked very  
25 credible. Because that allows a lot of

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1 Small Business Arbitration - June 16, 2005  
2 small companies like ours to compete  
3 within our own group or a larger size.

4 MS. HEAL: Excuse me. One of the  
5 eleven items that we asked everybody to  
6 testify on was the possibility of a  
7 tiered size standard. And so that's what  
8 you are advocating. And then there's  
9 also should we create separate size  
10 standards for government procurement?

11 MS. KANSAL: We now separate size  
12 standards for government procurement.  
13 Otherwise, it's irrelevant. A small  
14 company could never penetrate on its own.

15 It would have to have certain  
16 relationships. It would have to do it  
17 somehow. But just a company with  
18 integrity coming from the outside wanting

19 to compete, can never win. It's just not  
20 going to happen unless there is a pool  
21 which allows you to compete within your  
22 own peer group. I guess that's my key  
23 point.

24 MS. HEAL: There are small business  
25 set-asides. And you're saying you're not

□

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1 Small Business Arbitration - June 16, 2005  
2 seeing those set-asides.

3 MS. KANSAL: I'm not seeing them. No.  
4 Maybe I haven't pursued them  
5 aggressively enough. But, no, we don't  
6 appear to be. It's not low-hanging  
7 fruit.

8 MS. HEAL: You may want to talk  
9 to Deborah Libby, one of our PCRs after.  
10 She works with the government agencies.

11 MS. KANSAL: Thank you, ma'am. Thank  
12 you for giving me the opportunity.

13 MS. JANUS: I'd like to call Marianne  
14 Kemp. Is she here? And after her if  
15 she's here Nancy Napier.

16 MS. KEMP: Hi. I just want to say  
17 good morning and thank you again for  
18 letting me come here today.

19 As she mentioned, my name is Marianne  
20 Kemp. And I am the sole owner of Kemp  
21 Associates which does business as Express

22 Personnel Services. I've been the owner  
23 in the Hasbrouck Heights, New Jersey  
24 location for almost two years now.  
25 Actually started, introduced to the

□

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1 Small Business Arbitration - June 16, 2005  
2 industry about ten years ago.

3 I walked into the office of another  
4 small business owner looking for a job  
5 and was hired there in the office. I  
6 started there as a staffing consultant.  
7 I was there for almost eight years in a  
8 couple of different positions. One thing  
9 I learned is, even though we were doing  
10 business as Express Personnel, the  
11 actions in the office and what happened  
12 within that office was all under the  
13 control of that woman there.

14 We saw some very profitable years and  
15 we saw some very difficult times also. We  
16 saw clients who went bankrupt and left my  
17 owner with large amounts of bad debt. We  
18 saw workers' Compensation cases which  
19 raised the rates, and, of course,  
20 affected our profits.

21 And everything that happens within  
22 that office, whether it was positive in a  
23 size standards or a loss side was under  
24 that owner and their responsibility.

25                   During my eight years there, I

□

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1           Small Business Arbitration - June 16, 2005  
2           decided that I too was looking to open my  
3           own business. I looked at a couple of  
4           different opportunities even within the  
5           staffing industry. I looked outside as  
6           well. I looked for franchising and for  
7           independent opportunities also.

8           No matter what business I looked  
9           into, there was one thing that was  
10          consistent. I was going to be my own  
11          owner. I was going to make the day-to-day  
12          decisions in the office. And no matter  
13          what happened, whether it was a success  
14          or failure of my business was going to  
15          rest on my shoulders.

16          So in 2003 I decided to take that  
17          step. I gave up my guaranteed weekly  
18          paycheck and I decided to open my own  
19          business. I decided to stay within the  
20          staffing industry and I decided to stay  
21          with Express Services. I looked at them.

22          They're a franchise company. And  
23          they're in the business of franchising.  
24          I've seen what they provided, what  
25          products they provided, and what

□

1 Small Business Arbitration - June 16, 2005  
2 assistance an opportunity they had for  
3 other small business owners such as the  
4 owner I worked under.

5 So I decided to go with Express  
6 Services. So I opened my own business,  
7 chose my own location, my layout. I  
8 hired my own employees. And now I choose  
9 what clients I want to work with. I set  
10 my own profit margins. I do margins.  
11 The vendors I want to work with I choose.

12 All those day-to-day decisions are under  
13 my guidelines.

14 I do contract with Express  
15 Services as well as far as payroll  
16 services and also support services. But  
17 as far as day-to-day functions,  
18 everything rests on my shoulders here.

19 There's a lot of freedoms that come  
20 along with owned business, but there's  
21 also a lot of risks, as I mentioned  
22 before. The clients don't pay, or, you  
23 know, business is poor. That's my  
24 responsibility. What happens in my  
25 office in Hasbrouck Heights has no effect

□

2 on the other small businesses that also  
3 do business express.

4 So the point that I was trying to  
5 make in one on the list is just the  
6 relationship between the franchisee and  
7 the franchiser. It is a separate  
8 relationship. As I mentioned, all day-  
9 to-day functions are under my control.  
10 The clients that I worked with, the  
11 vendors that I work with, and obviously,  
12 the risks that I take are under my  
13 control also.

14 So just, in sum, a quick couple of  
15 points. I do bear the entire risk of  
16 financial loss for my business. I retain  
17 the majority of the profits from the  
18 business. I maintain day-to-day control  
19 over the operations. I provide all of  
20 the funding and all of the banking and  
21 bank loans that I've gotten on my  
22 shoulders as well. There's really no  
23 common ownership between the franchiser  
24 and the franchisee except like I  
25 mentioned, that in contract with them for

□

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1 Small Business Arbitration - June 16, 2005  
2 the services they provide. Thank you.

3 MS. HEAL: When you say you contract  
4 with Express Personnel, do you have a

5 choice to contract with somebody else for  
6 all the back office and payroll  
7 functions?

8 MS. KANSAL: That's what I'm  
9 contracting with Express Services for.

10 MS. HEAL: Do you have an option to  
11 go to somebody else?

12 MS. KANSAL: Sure. I could not  
13 contract with them.

14 MS. HEAL: That's an independent  
15 thing. Because a lot of the different  
16 franchisers have franchisee agreements do  
17 not give that option. So I wanted to  
18 make that clear.

19 MS. KANSAL: When I went into the  
20 staffing industry, I could chose to do it  
21 on my own, get another payroll company to  
22 do that with and open up Marianne  
23 Temporary Associates. But I chose to go  
24 with a franchisee agreement instead.

25 MS. HEAL: That franchise agreement

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1 Small Business Arbitration - June 16, 2005  
2 requires you to contract with them?

3 MS. KANSAL: For payroll services,  
4 yes. That's what I'm contracting for.

5 MS. HEAL: That's a requirement with  
6 franchisers.

7 MS. KANSAL: To use Express

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8 Personnel, mainly, yes.

9 MS. HEAL: The other thing is whose  
10 employees are you placing? Are you  
11 placing your own employees?

12 MS. KANSAL: They're kind of both.  
13 Under IRS regulations I'm the employer of  
14 record for Express Services. I do all my  
15 recruiting, my screenings. I pay for the  
16 costs of all of that. It's done through  
17 my office.

18 MS. HEAL: When you place the people  
19 you're placing, are not your people;  
20 they're the franchiser's people?

21 MS. KANSAL: As far as the employer  
22 of record, they're Express Services, the  
23 franchiser.

24 MS. HEAL: Okay. Thank you. Thank  
25 you very much.

□

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2 MS. JANUS: I'd like to call Nancy  
3 Napier.

4 MS. NAPIER: Hi. My name's Nancy  
5 Napier. I'm the owner of a small  
6 business. I'd like to thank you for the  
7 time and this opportunity and talk about  
8 the relationship between franchisees and  
9 franchisers in the staffing industry.

10 I've been an Express Personnel

11 Services franchisee in Princeton, New  
12 Jersey since 1998. So for more than  
13 seven years I've been experiencing both  
14 the joys and the struggles of owning my  
15 own business.

16 My small business is currently at a  
17 great disadvantage. I cannot qualify for  
18 SBA loans. I don't qualify for certain  
19 government contracting opportunities.  
20 And I've been excluded from the level  
21 playing field that you, the SBA, fight so  
22 hard to maintain for small businesses.

23 My company is a staffing agency. I  
24 run my office with a staff of four plus  
25 myself. Together we recruit, screen,

□

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1 Small Business Arbitration - June 16, 2005  
2 hire, train, supervise the employees that  
3 we send to our clients. We solicit new  
4 business. Work hard to ensure client  
5 satisfaction with our services.

6 I contracted with the franchiser  
7 Express Services to supply me with back  
8 office support which includes payroll and  
9 billing services. But the business is  
10 solely mine. The control of the business  
11 is mine alone. Its successes and its  
12 failures are mine, my responsibility  
13 alone. I'm simply contracted with

14 Express to be my support in the same way  
15 another small business might contract  
16 with their bank and office supply  
17 company, payroll or funding services, or  
18 an advertising agency.

19 I'd like you to consider the  
20 following points in judging whether my  
21 business is a small business. My company  
22 is an LLC owned by myself and one other  
23 business partner, Patrick. It's  
24 distinctly separate and independent from  
25 Express Services. We have our own INN

□

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1 Small Business Arbitration - June 16, 2005  
2 number, our own tax I.D. number, our own  
3 workers' Compensation account.

4 All the sole responsibility of  
5 hiring, screening, placing, disciplining  
6 the associates that we place at our  
7 clients. I bear the full cost of those  
8 recruiting and backgrounds checks and all  
9 the costs of overhead in my business.

10 I negotiate and repay independently  
11 my loans, any loans that I might need.  
12 My internal staff's payroll is paid by  
13 me, as well as their fringe benefits.  
14 Because in the staffing industry people  
15 are our product. The payroll and the  
16 payroll taxes are what we invoice to our

17 clients. I contract with Express  
18 Services to perform the administrative  
19 part of my accounts  
20 receivable. But the receivables are  
21 totally my responsibility.  
22 And I'll give you a case in point.  
23 When K-Mart filed for Chapter 11 they  
24 left me with \$105,000 of outstanding  
25 invoices. That was my responsibility to

□

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1 Small Business Arbitration - June 16, 2005  
2 pay. I needed to apply for a loan to be  
3 able to pay that money back to Express  
4 Services. That's money that could have  
5 paid a nice chunk of my mortgage. I was  
6 at a real disadvantage because I couldn't  
7 receive an SBA-guaranteed loan which  
8 would have substantially reduced the  
9 interest I paid.  
10 When you're studying the factors in  
11 determining the small business status,  
12 I'd like to ask you to keep these things  
13 in mind. I bear the entire risk of  
14 financial loss from my business. I  
15 retain the majority of the profits. It  
16 sounds familiar. Marianne already said  
17 this. I provide the financing for my  
18 company. And there's no common ownership  
19 or management between the franchiser and

20 me.  
21 I'm confident that when you take  
22 these things into account you'll agree  
23 that my company is a totally separate  
24 entity from a franchiser. And, as such,  
25 you'll grant me and other owners like me

□

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1 Small Business Arbitration - June 16, 2005  
2 the all-important recognition as a small  
3 business.

4 Thanks for the opportunity.

5 MS. HEAL: Thank you very much. I  
6 just want to you had mentioned that you  
7 wouldn't be eligible for government  
8 contracts. The reason for the government  
9 contracts is beyond SBA's control.

10 The Office of Personnel Management in  
11 January 2004 put a regulation into effect  
12 that said that the employees that will be  
13 placed at government agencies must be the  
14 employees of the company placing those  
15 employees, so...

16 MS. NAPIER: I have the company  
17 placing the employees.

18 MS. HEAL: But the employee of record  
19 is the franchise.

20 MS. NAPIER: The employee for IRS.

21 MS. HEAL: There's a legal  
22 reason. So that I just wanted to make

23 you aware of that. That no matter what  
24 SBA decides for government contracts, you  
25 would still have a problem, unless those

□

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1 Small Business Arbitration - June 16, 2005  
2 being placed were your employees.

3 MS. NAPIER: Okay.

4 MS. HEAL: Some of the franchisees  
5 have already addressed that issue. I  
6 just wanted to let you know that.

7 MS. NAPIER: We're requesting the  
8 recognition as a small business.

9 MS. HEAL: I understand that.

10 MS. NAPIER: Thank you.

11 MS. JANUS: I'd like to call Amelia  
12 Janisz. Is she here?

13 MS. JANISZ: All right. First of  
14 all, it's Amelia Janisz. That's all  
15 right. I answer to anything that vaguely  
16 sounds like it at this point in life.

17 I appreciate the opportunity to  
18 present to the SBA. There are some  
19 things I can address. I'm the president  
20 of a woman-owned small and disadvantaged  
21 business. And we are environmental  
22 engineers. So our  
23 NAICS code is 54133. So there are  
24 certain things which simply don't apply  
25 to us. We do not get venture capital.

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2 we're neither sexy or glamorous, nor have  
3 high returns. It's an old-line business.  
4 Nobody funds you. You do it yourself.  
5 we don't have franchisees. The big  
6 companies never put out a franchise for  
7 engineering. It's either you do it on  
8 your own or you don't do it.  
9 we've been in business about eight  
10 years. And we are principally a  
11 government contractor. So almost 99  
12 percent of our business is government  
13 business. So these rules are of great  
14 interest to us. And I'm going to address  
15 some of the issues that the SBA asked for  
16 comments on.  
17 One is the size standards. The other  
18 one is grandfathering. And the other one  
19 is the tiered sizes.  
20 As far as the size standards go, I  
21 would prefer to see a size standard based  
22 on receipts. Because right now for the  
23 engineering codes there's a 500-employee  
24 size standard and then there's a receipts  
25 size.

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2 And the problem is that, well, there's  
3 one code.

4 MS. HEAL: That's environmental  
5 remediation.

6 MS. JANISZ: Yes. But I can't go  
7 after the environmental remediation stuff  
8 because I'm competing with 500-employee  
9 firms. And there's no competition. With  
10 12 employees and maximum of 15, I can't  
11 go after those, you know. So I am  
12 completely locked out of that entire  
13 market.

14 MS. HEAL: Continue. We'll address  
15 that after. I don't want to interrupt  
16 you.

17 MS. JANISZ: That's okay. That's  
18 okay. So anyway, that's one of the  
19 issues that I have, is that if it comes  
20 to environmental remediation and it says  
21 small business, it isn't my small  
22 business. I just blow by those when they  
23 come out, business ops. Well, I'm not  
24 competing with those people, you know.

25 The other thing is that one of the

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2 things about the size standard also is

3 I've seen those people gaming the system.

4           Because sometimes we have gone in on a  
5           procurement together on something where  
6           I'm a subcontractor and those people were  
7           gaming the 500 employees. It was like,  
8           well, I know the size standard. We're  
9           okay because, you know, we're only like  
10          one over. But if one person is under,  
11          we'll be fine. You know. And there's a  
12          gaming of the system going on based on  
13          the 500-employee. And I cannot compete  
14          up with those people.

15                I would prefer to see it move to  
16                receipt-based size standard. Because  
17                that's much more difficult to game. Even  
18                you're under 4 million or you're not.  
19                And that's it.

20                And on the comment about, you know,  
21                the contractors who enter a dead zone or  
22                a limbo zone, I say tough nuggies, you  
23                know. These people know that they're  
24                coming up to the size limit. And it's  
25                not necessarily that you get a great deal

□

1           Small Business Arbitration - June 16, 2005  
2           of work, frankly, with the federal  
3           government based on whether or not you're  
4           a small business. It's more based on  
5           whether you're really qualified to do it  
6           and if you turn out a good job.

7           If you're over the small business  
8           size standard and you're competing with a  
9           10,000-person firm, well, be very good at  
10          what you're doing. They'll select you  
11          for being good. You know. I think  
12          that's a concern where some people have  
13          been gaming the system. Myself, when  
14          they say there's a dead zone or a limbo  
15          zone.

16          The other thing that I would like to  
17          comment on is like it says there's the  
18          tiered system. I would like to see some  
19          sort of tiered system because it is very  
20          difficult for me to compete at this point  
21          with 15 employees. The way we  
22          successfully compete now is by basically  
23          going underneath the radar, looking for  
24          the \$100,000 procurements or even the  
25          ones that don't hit the Fed biz ops. And

□

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1           Small Business Arbitration - June 16, 2005  
2           finding those and competing against other  
3           businesses our own size. But it's  
4           difficult.

5           I mean, it would be nice to see  
6           procurements coming out and Fed biz ops  
7           where I felt it was something that I  
8           would be able to reasonably compete  
9           against other small firms the same size

10 as mine.

11 Finally, on the standards of  
12 grandfathering, again, I think this is  
13 something where people are gaming the  
14 system. I mean, if you know it's coming  
15 up, well, then figure your niche. Be  
16 very good in your niche. Know who to  
17 market. And go out and do it. You'll  
18 still get the work. If they're still  
19 relying on the small business size  
20 standards, they're using that as a crutch  
21 in my feeling.

22 So those are the ones I can comment  
23 on here. If you want to look at how to  
24 break up the businesses, certainly for  
25 our NAICS code, I would be looking at

□

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1 Small Business Arbitration - June 16, 2005  
2 Engineering News Record. Because that  
3 will give you the top 500 firms and the  
4 average receipts and so on for those  
5 firms. And you know which is big. And  
6 you know which is medium sized. And you  
7 know which is small.

8 So, you know, that's kind of the  
9 comments I'd like to make on this. So I  
10 appreciate the opportunity to present.  
11 And, you know, take any questions.

12 MS. HEAL: Thank you. I want to go  
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13 back to remediation. That's a total and  
14 different NAICS code. You realize that.

15 MS. JANISZ: Yes.

16 MS. HEAL: And it's up to the  
17 contracting officer to determine what the  
18 proper NAICS code is. So if you don't  
19 feel that that's the proper NAICS code,  
20 you can always appeal that. But it's  
21 what's being purchased. The \$4 million  
22 and size standard.

23 Do you have any thoughts on that?  
24 we've had in other hearings people like  
25 the four million. People want it

□

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1 Small Business Arbitration - June 16, 2005  
2 increased. People want it to go to a  
3 number of employees. I'm just curious.

4 MS. JANISZ: I think the four million  
5 standard is all right. I would not like  
6 to see it go to a number of employees.  
7 And I definitely would not want to see it  
8 increased. I mean, because like you  
9 said, I know some of the people, some of  
10 the bigger firms who are in just barely  
11 under 500 standard, game the system. So  
12 if you're going to game the system that  
13 way, as soon as we've got higher level,  
14 they're going to game it even more. It's  
15 a very good indicator for who I'm

16 competing against, whether or not we're  
17 actually competitive or not.

18 MS. HEAL: Thank you.

19 MS. JANUS: I'd next like to call  
20 Daniel Sung.

21 MR. PARK: Thank you very much.

22 Actually, my name is Daniel Sung  
23 Park. It's okay. I am the president and  
24 CEO of Founder Card International. We  
25 are an IT services firm. But I'm also

□

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1 Small Business Arbitration - June 16, 2005  
2 the chairperson of the Minority Business  
3 Enterprise Input Committee of the New  
4 York Chapter of National Minorities  
5 Council.

6 In my position as an organization I  
7 represent over 1300 small minority  
8 businesses in the New York area  
9 representing over \$5 billion contracted  
10 with Fortune 1000 companies. It is also  
11 the New York affiliate of the National  
12 Minorities Prior Development  
13 Council which represents over \$74 billion  
14 in contracted business.

15 What I'd like to talk to you about  
16 today is, ultimately, I know that the  
17 first speaker, William, had said about  
18 the mission of the SBA. And I believe

19 what he said was to protect the small  
20 businesses. But I also believe the  
21 mission of the SBA is to enable small  
22 businesses to be able to compete to get  
23 larger. Such as I think a reflex of  
24 what's going on in the private sector  
25 needs to be implemented in the public

□

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1 Small Business Arbitration - June 16, 2005  
2 sector.  
3 what I mean by that is that currently  
4 in the current market in the private  
5 sector, for lack of a better term, an  
6 example, there's a consolidation of their  
7 supply list. What they do is they want  
8 to enable. They want less suppliers or  
9 meaning less small businesses. And they  
10 want to only use the largest companies  
11 and give them a greater volume of  
12 business.

13 As such, small businesses going into  
14 the private sector have a tremendous  
15 disadvantage. Even if you were to  
16 graduate to be a \$20 million company  
17 using my field and IT services firm, the  
18 reality of getting on the Wal-Mart list  
19 of 10, maybe five suppliers, most of the  
20 suppliers are all public companies, all  
21 billion dollar players. So for you to go

22 in as a \$20 million, \$21 million, let's  
23 say 22, because you just graduated,  
24 you're a \$22 million player to go into to  
25 market Wal-Mart would be impossible.

□

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1 Small Business Arbitration - June 16, 2005  
2 So what I would like to see, and what  
3 I'm proposing is to reflect on the tiered  
4 system. And I think the tier system  
5 should not also be an arbitrary number  
6 what you believe may be reality. I think  
7 it should be a continually monitored  
8 number. I propose what I've seen read,  
9 what I've read is where you would have,  
10 let's say in my business you would take  
11 the top 5 or 10 public companies, they  
12 can be private companies. You can get  
13 all the information, what their revenues  
14 would be.

15 And, as such, take a certain  
16 percentage. Let's say, 10 percent. So  
17 all of the averages of all the companies  
18 are about, let's say, \$5 billion. You  
19 take 10 percent of that. And then from  
20 that break that out into different tiers.  
21 Because obviously a company in my  
22 business that is 1 million versus \$20  
23 million.

24 The one million dollar business does

25 have a significant disadvantage to

□

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1 Small Business Arbitration - June 16, 2005  
2 compete, even against a \$20 million. So  
3 the SBA, ma'am, or the VCP program, I  
4 think there should be a tiered program in  
5 that regard so the other speakers had  
6 mentioned another tiered system.

7 The other part of the tier especially  
8 in the IT business our business, much  
9 like the staffing industry is very  
10 temporary in the sense it is all based on  
11 contracts. Six months and nine months.  
12 Even federal contracts are between six  
13 months and nine months or a year. But  
14 within that year you have certain  
15 functions if you complete a certain  
16 aspect of the project. You don't need  
17 that person anymore. Meaning you'll have  
18 a person for, in software there's front  
19 end, middleware and there's back end.  
20 There's different aspects. And you need  
21 a specialist in front end, specialist in  
22 the middle, specialist in the back end.

23 In the duration of a project, you may  
24 handle the back end first. And once  
25 you're done with the back end, then you

□

1 Small Business Arbitration - June 16, 2005  
2 go to the middle. And once you're done  
3 with the middle, you then go to the  
4 front. But you don't want to have an  
5 employee who's only specialized in the  
6 front. You have him on your payroll for  
7 six months or nine months before you  
8 actually get to utilize his services as  
9 such. And were using an employee  
10 standard or employee size would be  
11 completely incorrect for our industry.  
12 Because most of the time our individuals  
13 really only stay with our companies for  
14 maybe on average between six months to  
15 nine months. Then there's a turnover, a  
16 natural turnover to the next project.  
17 we do retain approximately 20 percent  
18 of those individuals who we may find  
19 another project for them to go on. But  
20 really in the IT field it's a very  
21 itinerant industry. Most of the  
22 individuals understand it's project based  
23 because their skills are so specialized.  
24 And, as such, it's not the traditional  
25 form of being with the company for 20, 30

□

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2 years that just really is not an  
3 applicable term or standard.  
4 So, again, thank for you the time.  
5 Happy to answer any questions.  
6 MS. HEAL: Fine.  
7 MS. JANISZ: Thank you.  
8 MS. HEAL: Now I'd like to call  
9 Wendell Niles.  
10 MR. NILES: I indicated that I I was  
11 not prepared to testify.  
12 MS. HEAL: You would prefer not to  
13 testify. Okay. Peter Sherwood. Did you  
14 want to testify?  
15 MR. SHERWOOD: Good morning. My name  
16 is Peter Sherwood. I have spent a  
17 substantial part of my professional  
18 working life in the areas we are here  
19 discussing today. I was the Corporation  
20 Counsel of the City of New York where I  
21 had responsibility  
22 for all of the legal business of the City  
23 of New York and its affiliated agencies.  
24 I was the Solicitor of the State of  
25 New York where I was responsible for the

□

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1 Small Business Arbitration - June 16, 2005  
2 appellate work, appellate litigation work  
3 of the State of New York. And opinions,  
4 the opinion funding for the Office of the

5 Attorney General.

6 I have taught law courses at the New  
7 York University School Of Law. And at  
8 the City University of New York School Of  
9 Law in Queens.

10 I was an assistant counsel at the  
11 NAACP Legal Defense Fund here in New  
12 York.

13 I've also served as a member of the  
14 New York City Procurement Policy Board  
15 and was on the New York State Ethics  
16 Commission.

17 Today I'm a partner at the law firm  
18 of Manatt, Phelps & Phillips where in my  
19 practice I continue to represent  
20 businesses doing business with government  
21 entities.

22 I'm pleased to have spent my career  
23 in and out of government dealing with  
24 issues of public concern, like civil  
25 rights, fair contracting, and, most

□

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1 Small Business Arbitration - June 16, 2005  
2 importantly, opportunity for all people.  
3 The opportunity is the bedrock of our  
4 society is what makes our nation great.  
5 The small business program and aid  
6 programs are part of that culture of  
7 opportunity. These programs worked and

8 have worked for many years. They provide  
9 small and minority business owners the  
10 chance to compete and to succeed. I know  
11 there are many issues here that we're  
12 here to examine today with the proposed  
13 rule making.

14 I'm here, however, to address and  
15 focus my attention on one, just one  
16 point. That is the process by which small  
17 businesses graduate from small business  
18 and aided programs and move out of small  
19 business status. When a firm grows out  
20 of a small business status typically when  
21 it employs more than 500 people or has an  
22 average annual receipts in excess of \$6  
23 million, it is no longer eligible to  
24 remain in the program.

25 Under the current rules, however,

□

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1 Small Business Arbitration - June 16, 2005  
2 it is allowed to retain and fulfill,  
3 through to completion, its existing small  
4 business contracts with all terms and  
5 provisions intact.

6 This grandfathering of existing  
7 contracts is a well-established rule  
8 because it makes logical sense. It  
9 allows small businesses in the program to  
10 grow and succeed. And to meet the

11 increasing needs and demands of their  
12 government contracts. Their government  
13 contracts may require without fear that  
14 their very success could put them in  
15 jeopardy of losing their existing  
16 businesses all at once upon growing  
17 beyond the quote, small business, end  
18 quote designation.

19 It provides an essentially transition  
20 period for both the business and the  
21 government to adjust to a new status. If  
22 the SBA were to abandon the current  
23 provisions, small business would actually  
24 have a disincentive to grow, succeed, and  
25 to graduate.

□

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1 Small Business Arbitration - June 16, 2005  
2 For example, from the 8(a)  
3 program left, they suffer a huge  
4 immediate and financial blow for the very  
5 act for doing so. The ability to finance  
6 and support new businesses and employees  
7 could be lost, as well as creating a  
8 domino effect.  
9 Given that opportunity is so central  
10 to the program's mission, this kind of  
11 result would simply make no sense and  
12 should be avoided. However else you  
13 choose to adjust the size standards for

14 small businesses, I'm here to urge you to  
15 leave the grandfathering provisions  
16 intact, including for businesses who may  
17 find themselves losing their, quote,  
18 small business classifications because of  
19 the changes the SBA makes in this  
20 process. The grandfathering provision is  
21 not simply an appendage to the program.  
22 It is at the very core of its mission.  
23 Thank you very much for the  
24 opportunity to testify and for  
25 considering my views.

□

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1 Small Business Arbitration - June 16, 2005  
2 MS. HEAL: Thank you, Mr. Sherwood.  
3 Thank you, Mr. Sherwood.  
4 You are aware that last January there  
5 was one change. If a company is  
6 purchased by another company, or if there  
7 is a change of name, that the company has  
8 to recertify that it is a small business?  
9 MR. SHERWOOD: Yes.  
10 MS. HEAL: You're aware of that?  
11 MR. SHERWOOD: Thank you.  
12 MS. JANUS: I'd next like to call  
13 Milford Montrose.  
14 DR. MONTROSE: Good morning. My name  
15 is Milford Montrose of HUCS Consulting.  
16 Forgive me for not having anything

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17 prepared. Last minute I heard about it.  
18 But because of my involvement, my prior  
19 involvement, I figure that I would come  
20 here and share some views.  
21 I'm fully aware that the SBA is  
22 trying to revise the size standard and  
23 last minute it was pulled off the table.  
24 My records shows where I was constantly  
25 in contact with the small business, me

□

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1 Small Business Arbitration - June 16, 2005  
2 being in Rockland County and now I'm in  
3 New York City. And I listened to the  
4 views of the last speaker. I share the  
5 sentiments of the small business. But I  
6 am here to speak about what I have  
7 accomplished and what I think should be  
8 done.  
9 In terms of the business size 500 is  
10 not for a small business. Because let me  
11 give an example. After 9/11 the security  
12 issues, I am a small business, I own the  
13 company, period. All the shares. And  
14 that is why I'm still here. Because in  
15 terms of the economy, if there were many  
16 partners I would you have had to find  
17 somewhere else. The company would have  
18 had many shareholders. But, thank god, I  
19 make the decision.

20 And that is why in a small business I  
21 urge each individual who has to invent  
22 themselves in the era and don't depend  
23 unless they have the money on others'  
24 opinions. And that's why I went to  
25 school and got my Ph.D. in business.

□

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1 Small Business Arbitration - June 16, 2005  
2 what happened is that the SBA, most  
3 people do not know, talk about the  
4 nonmanufacturing clause. A lot of  
5 individuals don't know. And those I  
6 didn't know. But I had a problem if you  
7 talk with the VA, and that's where I take  
8 myself. It didn't want, it came out and  
9 restricted, all restricted. And then I  
10 confront them with various clauses. They  
11 had no choice to go to the head counsel  
12 and concur in my decision. And I told  
13 them if they did not, then I'll seek just  
14 compensation. And they changed it.  
15 I had the same situation in Texas.  
16 Restricted me. Unrestricted on the 500,  
17 I did the same thing. And during that  
18 process I thought nonmanufacturing. What  
19 happened, many of the firms are saying we  
20 are a small business. What are you  
21 bringing to the table? You know, for a  
22 small firm, what can they at that point,

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23 regardless of the technical knowledge,  
24 what can they bring? They have to have  
25 some form of a contract or a measuring.

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1 Small Business Arbitration - June 16, 2005  
2 And then they will build a staff. And  
3 without that involvement they're like  
4 myself. I have been in business since  
5 1996 after I incorporated. And what the  
6 firms are saying to me, they're a small  
7 business. What is it that you're  
8 bringing to the table? You're not  
9 bringing a minority.  
10 That's not what it's all about. You have  
11 the knowledge. But you have to show us  
12 what you're bringing to the table.  
13 On the contrary. With 100 employees,  
14 then the same businesses that are calling  
15 themselves small, regardless of their  
16 location, they have no choice than to  
17 come and mentor us. Because we will be  
18 able to sell their product to the  
19 government, and thus, we will live to  
20 grow from whatever size.  
21 So as long as you keep it at 500,  
22 it's a disadvantage regardless.  
23 Regardless of whatever it is woman.  
24 Regardless of what. You must reduce that  
25 size to give us the opportunity to grow.

1 Small Business Arbitration - June 16, 2005  
2 Because, again, as may have risen to the  
3 security on all of our lists right now.  
4 I'm so involved. Most of the companies  
5 have said we want to work with you. You  
6 are an asset. But as long as you keep it  
7 at 500, they don't need me. They don't  
8 need. But when you bring it down, then  
9 that very one they will have to have  
10 someone within that business size.

11 So during that process they seen  
12 that it's a working relationship. But as  
13 long as you keep it there, I don't see  
14 how you can talk about small. Whether  
15 it's a woman-owned business or general,  
16 quotes, a small business. You're not  
17 helping them. You have to help them to  
18 grow. And the only way that you can do  
19 this is by that.

20 So I thank you so much for your time.  
21 And subject to that, I would say that's  
22 the direction.

23 MS. HEAL: Dr. Montrose, thank you.  
24 I just want to let you know that  
25 originally that was in the proposed rule.

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2 But because of the number of comments and  
3 the importance on the nonmanufacturing,  
4 that was pulled out. And we are going to  
5 be proposing, we're putting together a  
6 proposed rule now that will only address  
7 the nonmanufacturing rule.

8 So we're taking that out, we took  
9 that out of the original proposed rule  
10 for size standards. And we're going to  
11 address that separately. We're in the  
12 process of  
13 finalizing that rule. And as soon as it  
14 gets through SBA and the Office of  
15 Management and Budget it will be  
16 published in the Federal Register.

17 DR. MONTROSE: I look forward to it.

18 MS. JANUS: I'd next like to call  
19 Agatha Coggins. Would you like to  
20 testify?

21 MS. COGGINS: I've decided not to.

22 MS. JANUS: You've decided not to.

23 That actually concludes the testimony  
24 of all the people who have registered in  
25 advance to speak.

□

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2 Is there anyone else here that would  
3 like to give testimony? And what is your

4 name?

5 MR. WATTS: Jim Watts, W-a-t-t-s.

6 MS. JANUS: Sure.

7 MR. WATTS: My name is Jim Watts. I'm  
8 the owner of WATS International which is  
9 a distribution company. And I would like  
10 to make comment with reference to the  
11 tiering of  
12 sizes, if you will. And I want you to  
13 just comment on the fact, distribution  
14 size, how the distribution channel works  
15 in this country. When you're comparing  
16 from a manufacturing point of view to a  
17 distributor like myself, a large  
18 corporation can leverage just about any  
19 kind of way they want to. And market  
20 their product from a distribution  
21 standpoint.

22 From a distributor's side we would  
23 have to leverage volume over a wide range  
24 of customers to be able to compete at a  
25 volume level to get the right price that

□

1 Small Business Arbitration - June 16, 2005  
2 they would need to compete against a  
3 manufacturer.

4 And then in the industry also there  
5 is what is known as buying groups. That  
6 unless you make, unless you purchase up

7 to a certain dollar amount, you are  
8 isolated from becoming a part of these  
9 buying groups to be able to leverage your  
10 purchasing capability. So there's a  
11 glass ceiling, if you will, from a small  
12 business side to compete with those  
13 manufacturers that have tremendous  
14 leveraging capabilities.

15 So the tier side of procurement  
16 is very important when it comes to the  
17 value of a small business. Because they  
18 are not able to compete at that level  
19 with high volume. And the other portion  
20 of that is restricted from a  
21 manufacturing or a nonmanufacturing side.

22 They have restricted distribution based  
23 upon your territorial responsibility.

24 And so lots of cases you can't go in  
25 and get pricing because you're

□

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1 Small Business Arbitration - June 16, 2005  
2 restricted. And there might be another  
3 distributor that seizes a government  
4 account that has restricted distribution  
5 for that particular area. So I just  
6 wanted to point to that side.

7 And then also the unbundling, when it  
8 comes to supply chain management, I think  
9 it's very key to look at unbundling some

10 of those long-term contracts to provide  
11 greater tiering capability for small  
12 businesses.

13 You find in large companies, like IBM  
14 for an example, getting into global  
15 procurement. And they provide a variety  
16 of service under a NAICS code which  
17 encompass just about everything I can  
18 think of. Gain the capability of a small  
19 business to participate for some of those  
20 small individual purchases. And that's  
21 where the growth opportunity will be for  
22 companies like myself and other  
23 companies. And those are the basic  
24 comments that I had.

25 MS. HEAL: Thank you. Do you have a

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1 Small Business Arbitration - June 16, 2005  
2 card?

3 MR. WATTS: Yes.

4 MS. HEAL: Just so we can get all  
5 your information.

6 MR. WATTS: I'll bring it right up.

7 MS. JANUS: Someone else has also  
8 asked to make a presentation. And that  
9 person's name is Raghu Arora.

10 MR. ARORA: Good morning. I'm Raghu  
11 Arora. I represent ECC, a very small  
12 business. And I'm the program director

13 for operations out of New Jersey.

14 A couple of points I just wanted  
15 to make for ECC on this.

16 One is submitted this option to SBA  
17 also in the past. We submit that the  
18 size standards should be increased for  
19 750 people.

20 Second, we definitely support the  
21 SBA's views of the employee-based size  
22 standards.

23 Third, ECC believes that the SBA's  
24 immediate attention to application of  
25 Small Business Act for overseas contract

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1 Small Business Arbitration - June 16, 2005  
2 is called for. Critically in  
3 relationship to companies that are  
4 working for the U.S. government in Iraq  
5 and Afghanistan.

6 And, finally, we definitely encourage  
7 the use of separate size standards for  
8 government contracts as opposed to the  
9 SBA's certification and loan programs.

10 So those are the four main points  
11 which I wanted to get across.

12 Primarily for the size standards,  
13 it's been ten years since the SBA  
14 recognized ERS as an emerging industry  
15 and an expanding area of government

16 procurement. At that time, SBA had  
17 suggested \$18 million standard for this  
18 new industry. But raised it to 500  
19 people based on receipt of comments from  
20 the public. I think it's time to update  
21 the size standards to 750 people. It's  
22 been over ten years.

23 Another point of the same, especially  
24 for companies that are working overseas,  
25 like Iraq and Afghanistan. We would like

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1 Small Business Arbitration - June 16, 2005  
2 to propose please an interim size  
3 standard of 750 people in case the  
4 permanent one can't be done that quickly.

5 Because it takes a lot of logistical  
6 support a lot of resources, a lot of  
7 security. That the companies have to go  
8 and hire employees to make sure we can  
9 compete with the large businesses.

10 Another point is since the last ten  
11 years the industry standards for the  
12 industry that support the ERS has  
13 doubled. For example, heavy construction,  
14 engineering services, R&D in the physical  
15 engineering and allied sciences. But the  
16 SBA stand for mediation itself has not.  
17 As we proposed we go to 750 people  
18 employees.

19           On another point, small businesses  
20           performing overseas we propose student  
21           policies that would improve small  
22           business participation in the federal  
23           contracts overseas. We believe that  
24           adapting size standard principles with  
25           overseas markets will give more small

□

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1           Small Business Arbitration - June 16, 2005  
2           businesses access to overseas federal  
3           procurements. And encourage them to  
4           capitalize on the globalization trends in  
5           the overseas private markets as well.

6           In the battlefield exemption, small  
7           businesses, prime contractors working in  
8           Iraq and Afghanistan have encountered an  
9           inadvertent oversight in the size  
10          standard. First, these contracts include  
11          additional requirements to support the  
12          U.S. goal, such as hiring local laborers,  
13          subcontractors, and security guards.

14          Second, the political instability  
15          calls for far higher overhead for  
16          insurance and additional head count for  
17          security.

18          Again, point that I've made, we  
19          recommend the size determinations should  
20          not include revenues earned from or  
21          individuals employed in the performance

22 of contracts in hostile countries such as  
23 Iraq and Afghanistan.  
24 I'm going to make one more point. And  
25 my last one. Small businesses that

□

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1 Small Business Arbitration - June 16, 2005  
2 perform overseas contracts, even in  
3 peaceful areas, face similar size  
4 pressures. Core competence aside,  
5 overseas logistics, place large revenue  
6 and personnel demands on small  
7 businesses.

8 These individual characteristics are  
9 inherent in overseas operations, as we  
10 know. And should be accounted for in the  
11 size standard. Doing so will definitely  
12 attract more small businesses to overseas  
13 U.S. contracts.

14 I think those were my main points  
15 that I really wanted to make. Thank you.

16 MS. HEAL: Thank you very much. Can  
17 we have a copy.

18 MR. ARORA: Definitely I will give it  
19 to you.

20 MS. JANUS: Is anyone else present  
21 who would like to testify at this time?  
22 Okay. Just in case some people show up  
23 that want to testify and haven't gotten  
24 here yet, we're going to take about a

25 ten-minute break and reconvene. And if

□

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1 Small Business Arbitration - June 16, 2005  
2 at that time no one is here to present  
3 testimony, then we'll conclude then.

4 MS. FASANO: If anyone would like to  
5 speak to any of the contracting people  
6 during the break, Debra Lebow is our  
7 consumer representative. She covers the  
8 federal agencies in the New York area.  
9 Sandy Wu sitting right there. Sandy's  
10 one of our size specialists. She's also  
11 a COC specialist and she's got a  
12 subcontracting portfolio of large  
13 businesses, monitors small business  
14 plans. And Melinda Chen sitting beside  
15 her does the same. We also have some  
16 procurement diskettes for people, if they  
17 would like to take that information. It  
18 has directories, points of contacts with  
19 the federal agencies for the businesses,  
20 marketing tips, useful web sites, and  
21 information I think you would  
22 find very useful to help your small  
23 business grow. Thank you.

24 MS. JANUS: And there is a cafeteria  
25 as well as rest rooms on this floor.

□

1 Small Business Arbitration - June 16, 2005

2 (Short recess.)

3 MS. JANUS: We do have one more  
4 additional speaker. And if anyone else  
5 would like to speak please, register.

6 I'd like to call Kenneth Isaacs to  
7 testify.

8 MR. ISAACS: Good morning. My  
9 company's name is Altec Services. And we  
10 target the transit industry, primarily  
11 providing them with technical services,  
12 warrant fee service and modification type  
13 of work to trains and buses. I did not  
14 come today prepared to testify. And also  
15 I was not aware of these size changes,  
16 the changes to the size standards and  
17 everything else. Because, you know, I  
18 catch some of my mail, not all of it. A  
19 lot of the business that I do keeps me on  
20 the road constantly. I get back, you  
21 know, and I look at all the mail.  
22 Sometimes I catch up on a week's worth of  
23 mail, whatever. Last week I caught up  
24 with this one. And I decided I wanted to  
25 be here just to hear what this is all

□

1 Small Business Arbitration - June 16, 2005

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2 about. And I'm glad that I did come.  
3 And I had a little bit of -- I wasn't  
4 sure whether I wanted to testify or not.  
5 But it was interesting that a couple of  
6 people came up here and said some things  
7 that I think affects my business as well.  
8 But I don't know.  
9 They said it as clearly as I think I  
10 can say. Simply this: Before 9/11 my  
11 general liability insurance was very,  
12 very affordable. Also, I think some of  
13 the classifications the NAIS  
14 classifications under which my company  
15 operate, some of them I'm judged on the  
16 revenue, on the size of my revenue and  
17 some of them size number of employees.  
18 What has happened is that I didn't  
19 hear anybody here talk about the cost of  
20 doing business in today's environment as  
21 a small business. Since 9/11 our general  
22 liability insurance went up. I went from  
23 12,000 a year to 65,000 a year this last  
24 month, liability insurance.  
25 My Workers Comp because of the

□

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1 Small Business Arbitration - June 16, 2005  
2 industry that I work in is very, very  
3 high.  
4 My health insurance, I have to shop

5 around every year. These are the things  
6 that I focus on besides having to  
7 recertify myself with all these various  
8 agencies so I can continue to be a small  
9 business and continue to be competitive.

10 what happens to me is that in order  
11 for me to be able to continue doing  
12 business, that I have to find more jobs  
13 and get more employees. I'm supplying  
14 labor force. My stuff, my business is  
15 labor-intensive. I'm supplying people to  
16 an industry. The more people I get, the  
17 more my costs go up, because the workers'  
18 compensation and health insurance costs  
19 and everything else. I can't pass all  
20 these costs on to my employees. I absorb  
21 most of it myself in order to be able to  
22 keep these guys, in order so they can  
23 work and afford good health insurance for  
24 themselves and their families.

25 So like the fellow said, the guy that

□

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1 Small Business Arbitration - June 16, 2005  
2 came up before me, you know, he was at  
3 500. Now he's asking to go to 750. I  
4 would like for industries like ours that  
5 are so labor-intensive, like the ladies  
6 talking about the Kelly thing over there,  
7 they're a little different. But if they

8 did get to where I am today, if they were  
9 recognized as a small business and they  
10 were granted the loans and everything  
11 else that they're looking for, eventually  
12 in order to remain viable they have to  
13 grow their business. And when they grow  
14 their base and get data based upon  
15 revenue, it will kill them. They will  
16 not be able to survive.

17 I would like to see industries like  
18 ours that are providing people to various  
19 industries be judged on size standards.  
20 But maybe, and I'm not quite sure. I  
21 have to read some more about that. Maybe  
22 that tier level thing you guys were  
23 talking about. So that there are  
24 different tiers in order to accommodate  
25 the good doctor over here talked about

□

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1 Small Business Arbitration - June 16, 2005  
2 wanting to be able to compete in his own  
3 peer group.

4 The SBA thing. The MB thing.  
5 The DB thing. It has to be able to  
6 accommodate every type of small business  
7 and every different level of revenue and  
8 sizes. I am not quite sure what that  
9 would be right now. But, in the interim,  
10 if we continue to go in the direction

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11 that we're going where people are  
12 businesses or being judged upon their  
13 revenue.

14 A lot of us are not going to be doing  
15 business. A lot of us are not going to  
16 be in these programs anymore. We're not  
17 going to be here anymore. So I would  
18 like to see businesses like ours be  
19 judged on size standards; on the number  
20 of employees as opposed to revenue.

21 Thank you very much.

22 MS. HEAL: Thank you very much.

23 MS. JANUS: I'd now like to call  
24 Harold Suggs to testify.

25 MR. SUGGS: I guess I just walked

□

90

1 Small Business Arbitration - June 16, 2005  
2 right into it. Right. Okay. My name is  
3 Harold Suggs. I own a company called the  
4 Harvis Organization. H-a-r-v-i-s. We're  
5 a small communication agency, PR  
6 corporate litigation, so on. I'm coming  
7 from Asbury Park, New Jersey. So I  
8 apologize for being a little late this  
9 morning.

10 I would like to look at this from a  
11 little different perspective this  
12 morning. I know we're talking about size  
13 standards. When you looked at the overall

14 project or concept in regards to how  
15 we're approaching this. And I know we're  
16 the Small Business Association. There  
17 are rules already established for making  
18 sure that small businesses have an access  
19 to government contracts as opposed to  
20 large companies, and so forth and so on.

21 And we all know that 97 or 98.7  
22 percent of all employees are really  
23 represented by small businesses. But as  
24 I began to do my research, a couple of  
25 questions kept keeping back at me,

□

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1 Small Business Arbitration - June 16, 2005  
2 actually. And after a while it kind of  
3 honed in on just one. That being for  
4 whom does the bell really toll.

5 I know we're talking about the Small  
6 Business Administration. But it appears  
7 that from my little research here, that  
8 past policies of the SBA and the OMB,  
9 Office of Management and Budget, if I can  
10 talk, seems to have fostered the  
11 diversion of small business contracts to  
12 large firms in the U.S. as well as  
13 Europe. I mean, I was a surprised to see  
14 that Nike is considered a small business  
15 by the current standards that are being  
16 implemented right now. AT&T wireless,

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17 BAE, Northrup-Grumman.  
18 MS. HEAL: No.  
19 MR. SUGGS: I'm saying at one time  
20 they were.  
21 MS. HEAL: No. There was a glitch in  
22 the CCR system where the companies who  
23 put the person, who put the information  
24 in when you are talking, you talking low  
25 man on the totem pole. You had some

□

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1 Small Business Arbitration - June 16, 2005  
2 offices that were putting in location  
3 information instead of companywide  
4 information. They were not getting any  
5 government contracts because of that.  
6 And once we discovered that, that  
7 situation was corrected.  
8 MR. SUGGS: How long did you it  
9 takes?  
10 MS. HEAL: Took maybe two, three  
11 weeks.  
12 MR. SUGGS: No contracts were awarded  
13 in between?  
14 MS. HEAL: Not to those companies.  
15 Because companies have to certify in  
16 Section K of their contract. That they  
17 are a small business.  
18 Now they have to certify and keep  
19 electronic certifications on the online

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20 representations certification system.  
21 MR. SUGGS: Let me just read off the  
22 companies. Hewlett-Packard.  
23 MS. HEAL: No.  
24 MR. SUGGS: Oracle?  
25 MS. HEAL: Never got a contract.

□

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1 Small Business Arbitration - June 16, 2005  
2 MR. SUGGS: Raytheon?  
3 MS. HEAL: The only way those  
4 companies may have shown up in a report  
5 was those companies had purchased a small  
6 business. And because of the regulations  
7 at that time, which have been changed,  
8 that for the life of the contract because  
9 of the bureaucratic nightmare it creates,  
10 that the companies would be considered  
11 small for the life of that contract.  
12 In December of last year, we put  
13 something out last year and went in  
14 effect in December of last year. If a  
15 company is now purchased by another firm,  
16 no matter who they are or if they change  
17 their names, they have to recertify that  
18 they are a small business on that  
19 contract.  
20 MR. SUGGS: Now, what happens if they  
21 initially come in and, as you say, are  
22 purchased by a larger company. I mean,

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23 do they lose their status as a small  
24 company.  
25 MS. HEAL: They lose their status as

□

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1 Small Business Arbitration - June 16, 2005  
2 a small business.  
3 MR. SUGGS: What happens to the  
4 contract?  
5 MS. HEAL: The contract will continue  
6 to be in effect. But no longer be  
7 considered a small business.  
8 MR. SUGGS: But originally it was.  
9 MS. HEAL: Originally it was because  
10 a small business won it. If the company  
11 was purchased three years after it was, I  
12 had one, the contract, it's no longer  
13 considered a small business contract for  
14 the remainder of that contract.  
15 MR. SUGGS: But you hear my point.  
16 If initially on January 1st, let's just  
17 say 2004.  
18 MS. HEAL: It was a set-aside  
19 opportunity that went to a small  
20 business. But then the contract, I mean  
21 the company three years down the road is  
22 purchased by another company. And  
23 they're no longer a small business.  
24 MR. SUGGS: Right.  
25 MS. HEAL: That contract is no longer

1 Small Business Arbitration - June 16, 2005  
2 counted as a small business towards that  
3 goal.  
4 MR. SUGGS: They continue to hold  
5 onto the contract.  
6 MS. HEAL: They have to because you  
7 can't just cancel a contract in the  
8 middle of performance. For example, if a  
9 company is in the middle of developing an  
10 avionics system or doing a support service  
11 for our people over in Iraq or  
12 Afghanistan, you're going to tell me  
13 you're going to cut that and cancel that  
14 contract in the middle of contract  
15 performance?  
16 MR. SUGGS: You don't have to plan to  
17 cut it out. But you can phase it out.  
18 MS. HEAL: It would be. The task,  
19 probably if it was a task order contract  
20 the task would not be issued as a small  
21 business anymore. Okay.  
22 MR. SUGGS: Okay.  
23 MS. HEAL: But you're not going to  
24 cancel performance because a company was  
25 purchased by another company.

1 Small Business Arbitration - June 16, 2005

2 MR. SUGGS: Okay.

3 MS. HEAL: I mean, just a logistical  
4 nightmare. Think of the chaos you could  
5 cause to the Department of Defense or  
6 any other government agency if we had to  
7 cancel performance.

8 MR. SUGGS: Well, I understand what  
9 your point is. But again...

10 MS. HEAL: And we've taken the  
11 matters and have addressed the situation.  
12 And there is a rule right now that as  
13 soon as it gets through SBA and OMB, we  
14 had proposed on task order contracts two  
15 years ago. We're awaiting final review.

16 MR. SUGGS: Vernon, N.V.. which is a  
17 Dutch company of environment, are they  
18 considered a small company?

19 MS. HEAL: No, they're not considered  
20 a small company.

21 MR. SUGGS: At one time have they  
22 received a contract, a small company?

23 MS. HEAL: I doubt it very much.

24 MR SUGGS: I have definite documents  
25 that they received at least a hundred

□

1 Small Business Arbitration - June 16, 2005

2 million dollars in small business

3 contracts.

4 MS. HEAL: Maybe because they had  
5 purchased another small business.

6 MR. SUGGS: Is that fair, to be a  
7 small business guy who can't share in the  
8 contract?

9 MS. HEAL: To cancel the contract?

10 MR. SUGGS: If you hire me to do  
11 something and I'm doing it illegally,  
12 you're not going to keep me on?

13 MS. HEAL: No. You're in and out  
14 doing it illegally, sir.

15 MR. SUGGS: I'm just saying if a  
16 person doesn't meet the qualifications  
17 that are initially set up and he or she  
18 comes in as who they are, and maybe at  
19 that time they are, and later on they no  
20 longer meet that qualification, why do  
21 they keep the contract?

22 MS. HEAL: Because you can't cancel a  
23 contract in the middle of performance.

24 MR. SUGGS: Is there a written --

25 MS. HEAL: Do you know how long it

□

1 Small Business Arbitration - June 16, 2005  
2 takes to get a contract out?

3 MR. SUGGS: I understand that. It's a  
4 long time. My point is that somewhere  
5 those contracts should be phased out.

6 MS. HEAL: They will. Like I said,  
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7 if the task orders aren't issued anymore,  
8 if it's a task order contract.

9 MR. SUGGS: But if the contract is a  
10 multiple award contract?

11 MS. HEAL: That's a task order  
12 contract.

13 MR. SUGGS: And you're saying those  
14 are like for 20 years?

15 MS. HEAL: Yes. No longer considered  
16 as a task order.

17 MR. SUGGS: And so somewhere in the  
18 eighth year they become larger than they  
19 initially were. They still continue to  
20 keep the contract for the remaining 12  
21 years?

22 MS. HEAL: Not as a small business.

23 MR. SUGGS: As a large business?

24 MS. HEAL: As a large business.

25 MR. SUGGS: That's a contradiction in

□

1 Small Business Arbitration - June 16, 2005  
2 that.

3 MS. HEAL: It depends on how that  
4 contract was awarded.

5 MR. SUGGS: Let me ask you this now.  
6 Some of my research found, rather there  
7 were some companies who had  
8 misrepresented their initial position as  
9 a small company. Falsified --

10 MS. HEAL: They would have the right  
11 to appeal that to the SBA. And a  
12 decision will be made and statements,  
13 penalties can be had.

14 MR. SUGGS: My question to you, has  
15 anyone to your knowledge been penalized  
16 under Rule 16(d) which is --

17 MS. HEAL: Yes. I was involved in  
18 one about 15 minutes ago.

19 MR. SUGGS: Excuse me?

20 MS. HEAL: I was involved in one  
21 about -- not 15 minutes, 15 years ago.  
22 We prosecuted about two or three  
23 companies.

24 MR. SUGGS: Are you holding me to the  
25 five minutes for answering questions that

□

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1 Small Business Arbitration - June 16, 2005  
2 are asked of me?

3 MR. MANGER: It wasn't a forum for  
4 debate.

5 MR. SUGGS: Just comments I was  
6 saying.

7 MS. JANUS: You can go ahead.

8 MR. SUGGS: You answered one of my  
9 questions.

10 what was also disturbing to me is  
11 that I found at least in my research that  
12 the SBA seems to solicit input from prime

13 contractors in large companies regarding  
14 small business policies and issues and  
15 concerns. That seemed to be a  
16 contradiction to me in regards to, well,  
17 just from my research I have found that.

18 I also found that Defense Department  
19 now controls the small business database;  
20 is that correct? which I understand that  
21 they are really adverse, have been for 20  
22 years or thereabouts, adverse to meeting  
23 small business contractual goals. And  
24 they themselves have awarded about \$47  
25 billion in large urban contractors and

□

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1 Small Business Arbitration - June 16, 2005  
2 larger suppliers.

3 For me, basically, I will sum up. I  
4 was just concerned. It doesn't appear  
5 that there's checks, well, it does appear  
6 there are checks and balances. But the  
7 checks and balances are not being used  
8 properly to assure small businesses fair  
9 access to contracts. Because it's hard  
10 enough to start a small business. And,  
11 as you know, a lot of small, over 50  
12 percent or thereabouts of small  
13 businesses that start up, actually  
14 falter.

15 But you make it even harder if you're

16 concentrating on government contracts for  
17 a business to survive if you're not  
18 giving them fair access to these  
19 contracts. And to now look at maintaining  
20 or allowing grandfathering to stay in the  
21 mix makes it even rougher for a small  
22 business to get access to these  
23 contracts.

24 My position would be, first of all,  
25 you go back to square one where the 1963

□

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1 Small Business Arbitration - June 16, 2005  
2 Act created the 23 percent. You push  
3 that up. Well, okay. 1953. Was it '53  
4 or '55?

5 MS. HEAL: '53 is when the agency was  
6 established. Goals weren't established  
7 until 1978.

8 MR. SUGGS: 1978. I beg your  
9 pardon. But those should be moved up. I  
10 really think the issue of grandfathering  
11 should be moved out of the picture.

12 Again, you have enough problems as a  
13 small company to try to when you're  
14 competing against larger guys who can  
15 come in and buy a small company and still  
16 have those contracts remain in place.  
17 Individuals don't have access to those at  
18 all, small companies.

19 MS. HEAL: I also want to set the  
20 record straight. DOD does not control  
21 the Small Business Administration  
22 database. There is a what they call an  
23 Integrated Acquisition Environment that  
24 oversees all electronic. It's part of  
25 the E.Gov. initiative, I don't want to

□

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1 Small Business Arbitration - June 16, 2005  
2 say creating one big, giant, that is one  
3 giant entry point where companies in  
4 order to do business with the government  
5 must be registered in the Central  
6 Contractor Registration system in order  
7 to get paid. That's a payment system.

8 Office of Federal Procurement policy  
9 decided several years ago that the entry  
10 point for SBA's dynamic small business  
11 search, or ProNet system as it was called  
12 at that time, would be through CCR. So a  
13 company only has to register once. We  
14 are still in the process of ironing some  
15 of the kinks out of the system.

16 And also now there is in order for a  
17 company to certify that it is a small  
18 business, a large business, an SDB, a  
19 minority. Only if they have to certify  
20 in the Online Representation and  
21 Certification system, ORCA. And that is

22           Section K of the contract. I think I  
23           just wanted to explain that.  
24           MR. CHAPMAN: Can I ask a question?  
25           MS. JANUS: Who are you?

□

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1           Small Business Arbitration - June 16, 2005  
2           MR. CHAPMAN: I'm Lloyd Chapman of  
3           the Small Business League.  
4           who manages CCR?  
5           MS. HEAL: Who manages CCR?  
6           Integrated Acquisition Environment.  
7           MR. CHAPMAN: Isn't that the  
8           Pentagon?  
9           MS. HEAL: No, that's GSA.  
10          MS. JANUS: Is there anyone else  
11          present who would like to give testimony  
12          this morning? Okay. Since no one else  
13          has expressed an interest in testifying,  
14          I would like to call upon Administrator  
15          William Manger to make the closing  
16          remarks for today's hearing.  
17          MR. MANGER: Thanks again, Karen. And  
18          thank you all to the panelists for being  
19          present. And most importantly those who  
20          came forward to testify today at these  
21          size standard hearings. I wanted to just  
22          conclude. Again, thank you all for your  
23          participation. It's very important to  
24          have as much participation as possible so

25 that when the proposed rule making goes

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1 Small Business Arbitration - June 16, 2005  
2 forward, we can take the public's views  
3 into account. And I assure you that SBA  
4 will carefully study all of the remarks  
5 and testimony that was given here today.

6 we will start the deliberations on  
7 new size standards policy as soon as we  
8 have the final hearing in Los Angeles  
9 which will be held on June 29th. And a  
10 new policy proposed as quickly as  
11 possible thereafter. The public will have  
12 an opportunity at that time to comment on  
13 any specific proposals which issue in the  
14 future.

15 Again, your participation will help  
16 us to do a better job for you. And I  
17 thank you very much. Have a good day.

18 MS. HEAL: Thank you for coming. This  
19 public hearing is adjourned.

20 (Time noted: 10:50 a.m.)

21

22

23

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1 Small Business Arbitration - June 16, 2005

2

3 C E R T I F I C A T E

4

5 STATE OF NEW YORK )

6 ss:

7 COUNTY OF NEW YORK)

8

9 I, ROBERT M. LEVINE, CM, a Shorthand  
10 Reporter and Notary Public within and for  
11 the State of New York, do hereby certify:

12 That the hearing hereinbefore set  
13 forth is a true record of the testimony  
14 given.

15 I further certify that I am not  
16 related to any of the parties to this  
17 action by blood or marriage, and that I  
18 am in no way interested in the outcome of  
19 this matter.

20 IN WITNESS WHEREOF, I have hereunto  
21 set my hand this 27th day of June, 2005.

22

23

24

25

\_\_\_\_\_  
ROBERT M. LEVINE, CM

□